**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**
**REGION IX**
**75 Hawthorne Street**
**San Francisco, CA 94105-3901**

April 28, 2008

Amy Dutschke
Bureau of Indian Affairs
Pacific Region Office
2800 Cottage Way, Room W-2820
Sacramento, CA 95825-1846

Subject: Final Environmental Impact Statement (DEIS) for Scotts Valley Band of Pomo Indians Fee-to-Trust and Gaming Development Project, Contra Costa County, California (CEQ #20080110)

Dear Ms. Dutschke:

The U.S. Environmental Protection Agency (EPA) has reviewed the above-referenced document pursuant to the National Environmental Policy Act (NEPA), Council on Environmental Quality (CEQ) regulations (40 CFR Parts 1500-1508), and Section 309 of the Clean Air Act.

EPA reviewed the Draft Environmental Impact Statement (DEIS) and provided comments to the Bureau of Indian Affairs on May 25, 2006. We rated the DEIS as Environmental Concerns - Insufficient Information (EC-2) because of the inadequate characterization of contaminated parcels being considered for Trust transfer. We subsequently worked with Bureau of Indian Affairs (BIA) and their consultants to provide input on a sampling plan and resulting characterization report. Later, we advised BIA that the proposed soil excavations (approximately 4,300 cubic yards) as identified in Figure 4 of the Site Characterization Report (Appendix BB) and their proper disposal would adequately mitigate our concerns. With these actions, we did not foresee a significant risk of adverse health or environmental effects or liability for remediation costs to the Federal government. Please ensure that this commitment to contaminated soil removal is included in the Record of Decision (ROD).

EPA also recommended that if contamination exceeding EPA's Residential Preliminary Remediation Goals (PRGs) or Regional Water Quality Control Board (RWQCB) Residential Environmental Screening Levels (ESLs) is left onsite, that assurances be provided so that residential uses do not occur in the future, such as through deed restrictions. The FEIS indicates that the site would be remediated to commercial standards and that either a deed restriction or an agreement between the Tribe and EPA would be implemented to restrict residential uses from occurring (Response to Comments 46-14). We continue to recommend the use of a deed restriction for this purpose and respectfully request that BIA not commit EPA to an agreement to restrict land use on Tribal Trust property since this is not an appropriate role for EPA in this

context. We recommend that the BIA implement such land use restrictions prior to trust transfer to ensure future residential uses do not occur without further remediation. With this action, we have no objections to the proposed project.

Also, we would like to identify an error in the FEIS, page 3.10-10 which states that when soil contains soluble lead levels over the soluble threshold limit concentrations (STLC) of 5.0 mg/L, that it is not considered hazardous if the total concentration is less than the total threshold limit concentration (TTLC) of 1000 mg/kg. A material/waste is considered "hazardous" if *either* the STLC extract or total concentration exceeds the corresponding criteria.

We appreciate the opportunity to review this Final EIS. When the ROD is signed, we would appreciate receiving a copy at the address above (mail code: CED-2). If you have any questions, please contact me at (415) 972-3846 or Karen Vitulano, the lead reviewer for this project. Karen can be reached at (415) 947-4178 or vitulano.karen@epa.gov.

Sincerely,

Karen Vitulano for

Nova Blazej, Manager
Environmental Review Office

cc: Don Arnold, Tribal Chairman, Scotts Valley Band of Pomo Indians
Joel Larson, Tribal EPA Coordinator, Scotts Valley Band of Pomo Indians